



## STATE AID FOR LOCAL TRANSPORTATION CONSULTANT USE ON FEDERAL AID PROJECTS

Rev. June 2010

Page 1 of 2

The State Aid Division, in accordance with its delegation agreement with the FHWA and Federal regulations, must assure that a Local Public Agency (LPA) is **adequately staffed and suitably equipped** to undertake a federal aid project, and that a **qualified, independent, full-time employee** of the agency in **responsible charge** of the project, as a condition of Federal participation. These terms are defined as follows:

- Qualified
  - Knowledgeable about the project and contract administration
  - Recognize that expenditures are proper
- Independent (where a LPA elects to use consultants for design and/or construction engineering services)
  - Must not rely on a consultant's advice in matters that directly or indirectly affect the consultant's compensation
  - Use an independent source for technical assistance, ie: County Engineer, Mn/DOT, or another consulting firm.
  - No engineer performing services for a LPA in connection with a project shall have, directly or indirectly, a financial or other personal interest (other than his employment or retention by a LPA), in any contract or subcontract in connection with such project.
- Responsible Charge
  - Full-time employee of the Local Public Agency
  - Sufficiently involved to be aware of project issues
  - Approve/sign all project/contract documents, such as:
    - Pay vouchers
    - Contract changes, ie: Supplemental agreements, Change Orders
    - Materials Certification

A conflict occurs when a consultant engineer is designated as city engineer and that consultant engineer (or the firm) conducts both project design and construction oversight. The use of consultants as designated City Engineers must be in compliance the Code of Federal Regulations (CFR) regarding "conflicts of interest" (23 CFR 1.33) and "supervising agency" (23 CFR 635.105). To meet these regulations, the following shall apply:

1. When under a retainer from a city, a consultant (either an individual or the firm) may be considered the city's full-time publicly employed engineer.
2. The use of a retainer should assure that a consultant will be at the full disposal of the city for some predetermined period of time, a period that would usually extend for a minimum of one year. The provisions of the retainer should clearly state to what official or board the consultant is to report, and the extent of the authority delegated to the consultant.
3. A consultant (either individual or the firm) employed as the City Engineer must not perform as a consultant on a project for which the City Engineer is in responsible charge.
4. If the City Engineer is a consultant, the following are acceptable ways to proceed:
  - An independent consultant (not from the City Engineer's firm) should be utilized for construction oversight, or
  - Partner with another City, County or Mn/DOT to provide construction oversight.
5. Use of a full time City staff member (ie: City Administrator or Public Works Director) to be in responsible charge may be approved if that person meets the definitions of qualified, independent and in responsible charge, as described above.



### 23 CFR 1.33 CONFLICTS OF INTEREST

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract.

No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project.

No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. **It shall be the responsibility of the State to enforce the requirements of this section.**

### 23 CFR 635.105 SUPERVISING AGENCY

(a) The SHA has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The SHA shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications.

(b) Although the SHA may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the SHA shall provide a **full-time employed State engineer** to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the SHA does not have legal jurisdiction, or when special conditions warrant, the SHA, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is **adequately staffed and suitably equipped** to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in **responsible charge** of the project.

### NON-FEDERALLY FUNDED PROJECTS:

The State Aid Division does not have this responsibility for State Aid funded projects. Consultants should refer to Minnesota Rule 1805.0300 for ethics guidance concerning State Aid or local projects.